Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Federal-State Joint Board on Universal Service: Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas	)))))	CC Docket No. 96-45

COMMENTS OF BELL ATLANTIC MOBILE, INC.

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SUMMARY

Bell Atlantic Mobile, Inc. (BAM), submits these comments in response to the *Further Notice of Proposed Rulemaking (Further NPRM)* in this proceeding. BAM supports the Commission's efforts to identify and remove obstacles to achieving the important national goal of universal service. One of the most serious obstacles is the drag that state and federal regulation is placing on the ability of commercial mobile radio service (CMRS) providers to participate in the universal service program. Ample evidence in other proceedings has already shown that CMRS is ready to serve residents that lack phone service, and can in some cases do so at a lower cost than landline. But some states' efforts to impose landline regulation on wireless carriers, and state and federal rules written only for landline services, are discouraging wireless from doing so.

The Commission should take prompt, forceful actions to remove regulation that serves no public interest purpose, but instead discourages wireless technology from meeting the needs of unserved citizens. BAM believes that these actions will stimulate service to tribal lands and other underserved areas and thus help to achieve the national goals of universal service. The Commission should:

1. Declare that Section 214(e)(6) of the Communications Act grants the Commission the authority to act on CMRS carrier petitions to become an Eligible Telecommunications Carrier (ETC). Only when a state commission can establish that it has jurisdiction over the CMRS carrier should it be involved in the process, and the Commission should then exercise concurrent authority to ensure that federal goals for wireless service are met. Asserting federal primacy over mobile providers' ETC petitions is consistent with the federal paradigm for CMRS and will overcome the problems wireless carriers have faced in attempting to secure state ETC designations.

2. Declare that, if a state commission proves that it has authority to act on a wireless carrier's ETC petition, it must act within 90 days, and it may not impose landline-type regulation, require the provider to have specific services already in place, or require the provider to serve any areas other than its own federally-licensed service area. States should merely confirm that the CMRS provider will be able to offer the basket of federally-defined universal service offerings. Availability of universal service support cannot become the lever for reimposition of regulation.

CMRS providers have largely been deregulated, and there is no legal or policy basis for them to be re-regulated in order to participate in universal service.

3. Amend the Commission's universal service rules to remove landline "bias." Many of those rules do not appear to permit wireless carriers to participate in universal service programs and obtain support, or use terms and impose conditions that do not fit the way wireless services are offered and priced.

I. REGULATION IS IMPAIRING WIRELESS PROVIDERS FROM HELPING TO MEET UNIVERSAL SERVICE OBJECTIVES.

The *Further NPRM* launches a far-ranging inquiry as to how the Commission can expand telecommunications deployment and subscribership on tribal lands and other underserved areas of the nation. The Commission already has before it, however, ample evidence to draw four conclusions.

1. The need for additional action is clear. Nearly four years after enactment of the Telecommunications Act, and its direction that "consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high-cost areas, should have access to telecommunications and information services,"[1] this goal is not yet within reach in parts of the nation. This is not only true on many tribal lands, but also in other rural and urban areas where residents cannot afford any phone service. The record in many other proceedings provides

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[1] Telecommunications Act of 1996, Sec. 254(b)(3), 47 U.S.C. § 254(b)(3).

literally thousands of pages that exhaustively document the lack of service on tribal lands and rural areas.[2] Indian tribes, health care providers, government agencies and others have all provided ample evidence of the scope of the problem. The *Further NPRM* acknowledges the situation. The Commission should move from collecting information on the problem to *solving* it, by taking concrete actions designed to bring service to these underserved areas.

2. Wireless is well positioned to provide universal service to tribal lands and other areas, if it is given the opportunity to do so. The record in these other proceedings is equally clear in showing that cellular, PCS and other wireless services can "bridge the gap" by providing phone service in areas where residents cannot afford or do not even have access to landline phone service. The record in the Arizona and New Mexico tribal lands docket, for example, provided extensive data as to the advantages radio services have in connecting the widely scattered populations and difficult terrain that characterizes Indian reservations in these states. Many parties documented the efficiencies that both terrestrial and satellite wireless services can bring. Comments in the more recent docket on wireless service to tribal lands supplied considerable additional evidence as to the

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2 *E.g.*, Public Notice, "Federal Communications Commission Will Hold a Series of Public Hearings on Telephone Service for Indians on Reservations and Seeks Comment from the General Public on all Testimony and Other Evidence Presented Therein," BO Docket No. 99-11 (rel. March 2, 1999). The further notice summarizes the extensive testimony in that and other proceedings documenting the lack of service on tribal lands.

benefits and advantages of wireless in providing universal service and advanced services.[3] There can be no question that wireless can play a major role in meeting the needs of the nation's residents in underserved areas.[4]

Promoting CMRS participation in universal service is not only good policy; it is the law. The 1996 Act sought to open the provision of universal service to all telecommunications carriers (including wireless) that are able to offer that service. including wireless carriers. Congress decided that allowing all types of carriers to participate would help promote the expansion of universal service. It declared that *all* telecommunications carriers, not just landline carriers or incumbent universal service providers, must have the opportunity to provide universal service and receive support. Its vision was a *competitive* market for universal service support that would expedite improved service to all parts of the nation. This important

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3 Extending Wireless Telecommunications Services to Tribal Lands, Notice of Proposed Rulemaking, WT Docket No. 99-266, FCC 99-205 (rel. August 18, 1999) (Tribal Lands Rulemaking). See, e.g., Comments of Bell Atlantic Mobile, Inc., Western Wireless Corporation, Cellular Telecommunications Industry Association, and Satellite Industry Association, filed Nov. 9, 1999.

4 The Commission has specified nine core services that carriers must be able to offer to become ETCs, such as voice-grade access to the PSTN and access to emergency, operator, interexchange and directory services. 47 C.F.R. § 54.101(a). Most wireless carriers are able to offer each of these services. For example, in its petition for ETC designation in Delaware and Maryland, BAM demonstrated that it offered all of the required nine core services. *See* Public Notice, "Petition of Cellco Partnership d/b/a Bell Atlantic Mobile for Designation as an Eligible Telecommunications Carrier," CC Docket No. 96-45, DA 99-2544 (rel. Nov. 16, 1999).

directive should lead the Commission to take actions that induce competitive wireless participation in universal service programs.

3. Wireless providers are not participating in universal service largely due to regulatory barriers that preclude obtaining support. Despite the benefits that CMRS providers can bring to the effort to achieve Congress's universal service goals, the fact is that wireless is on the sidelines of universal service. It is not obtaining more than a tiny fraction of universal service support. Wireless carriers find themselves obligated to contribute significant sums to finance these programs, but with comparatively little ability to obtain support.

Many Indian lands are located in extremely high-cost areas, making the delivery of telephone services at affordable rates uneconomic without access to additional funding support. The same is true in other rural and unserved areas. Despite having in some cases cost advantages over landline providers, wireless providers are unable to provide universal service to these areas unless they obtain support. Obtaining that support in turn depends on obtaining ETC status, and on having rules that do not discriminate against wireless providers.

Regulatory obstacles and rules written for landline service have, however, deterred most wireless carriers from participating in universal service programs. For example, one state has proposed regulations that would subject CMRS providers to LEC-type regulation, including requiring them to obtain a certificate to do business, as a condition to qualifying for universal service support – even though

such regulation is preempted by Section 332(c)(3) of the Communications Act. Another state has required wireless carriers to commit to provide service state-wide as a condition of ETC status. Given that most FCC licenses do not encompass the entirety of the state, this action has barred wireless carriers from qualifying as ETCs. Still other states have sought to impose burdensome requirements as prerequisites to qualifying as an ETC which discourage wireless carriers from making the investment needed to become universal service providers.[5] Yet it is precisely that investment that is needed if wireless is to be part of the solution to low telephone penetration in Indian lands and other rural areas.[6]

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5 Western Wireless has reported that, although it filed ETC in thirteen states over a year ago, only one has been granted, while "applications in other states languish." It also notes it was "forced to withdraw its application in another state due to unduly burdensome discovery demands (Montana, where the company faced over 465 data requests)." *Tribal Lands NPRM,* Comments of Western Wireless, November 9, 1999, at 4 n.10.

6 Discriminatory treatment of wireless providers has extended to states' own universal service programs. Kansas, for example, has restricted the areas in which wireless providers are entitled to state universal service support to areas with fewer than 10,000 access lines, a limit that is not imposed on incumbent carriers, and has regulated the amount that wireless carriers can collect from customers to offset the costs of universal service contributions.

These restrictions were challenged a year and a half ago as violating Section 253 and other provisions of the 1996 Act. They clearly frustrate the ability of wireless carriers to qualify as universal service providers. The Commission has, however, not acted. "Commission Seeks Comment on Western Wireless Petition for Preemption of Statutes and Rules Regarding Kansas State Universal Service Fund," File No. CWD 98-90, released August 4, 1998; *see* Comments of Bell Atlantic Mobile, Inc., filed September 3, 1998.

4. Wireless participation in universal service cannot be a pretext for re-regulating wireless service. Congress and the Commission have exempted wireless providers from regulation in some areas (entry and rates), and imposed limited regulation in other areas. These actions are based on the judgment that minimizing regulation and allowing market forces to drive wireless growth will generate the greatest benefits and best advance achievement of a seamless national wireless infrastructure.[7]

This deregulatory paradigm cannot be allowed to be eroded simply because wireless carriers seek to participate in universal service programs. A wireless carrier whose offerings qualify for support is still offering CMRS. Its "universal service" offering is no less CMRS than any of its other offerings, and can be no more regulated. Subjecting CMRS providers to new regulation merely because they are participating in universal service would not only be contrary to the fundamental deregulatory model that applies to CMRS as a matter of law; it would also undercut the very goals that the Commission is striving to achieve, by discouraging wireless participation in expanding service to residents of tribal lands and others that currently lack access to communications service.

There is in short no doubt that there are many American citizens who do not have access to basic communications services, and no doubt that wireless can

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7 *See Implementation of Sections 3(n) and 332 of the Communications Act, Second Report and Order,* 9 FCC Rcd 1411 (1994).

contribute to solving that problem. But there is also no doubt that if this is to occur, regulatory changes must first be made that will encourage carriers to compete for universal service dollars and thereby help to achieve the goals of universal service. In its remaining comments, BAM offers proposals for changes.

II. THE COMMISSION SHOULD ASSERT RESPONSIBILITY TO ACT ON ETC PETITIONS BY WIRELESS CARRIERS.

Before a carrier can participate in the high-cost or lifeline universal service programs, it must be designated as an Eligible Telecommunications Carrier.[8] Enabling wireless carriers to become ETCs is thus essential to achieving the benefits wireless can bring to tribal lands and other unserved areas. Section 214(e)(2) generally places authority for designating a carrier as an ETC with the state commission. Section 214(e)(6), however, states:

> COMMON CARRIERS NOT SUBJECT TO STATE COMMISSION JURISDICTION. In the case of a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission, the Commission shall upon request designate such a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the Commission consistent with applicable Federal and State law.

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8 *See* 47 U.S.C. § 254(e): "After the date on which Commission regulations implementing this section take effect, only an [ETC] designated under section 214(e) shall be eligible to receive specific Federal universal service support."

The *Further NPRM* seeks comments on how to interpret and apply Section 214(e)(6). It tentatively concludes, "the nature of the service *or* the geographic area in which the carrier provides it should be the basis for distinguishing between the designation authority of the Commission and state commission under section 214(e)(6)." *Id.* at § 79 (emphasis added). BAM fully agrees that this is the correct reading of this provision. Section 214(e)(6)'s reach is not limited either to the type of service a carrier offers, or to the geographic area that is served. The language is more sweeping. The only issue is whether the carrier is subject to the state commission's jurisdiction. This may be the case because of the area the carrier proposes to serve, the types of service it offers, or both.

A. Application of Section 214(e)(6) to Tribal Lands. Section 214(e)(6) is thus applicable to at least two situations. The first concerns service to tribal lands. As the *Further NPRM* recognizes, federally-designated tribal lands are not subject to the state's jurisdiction in most areas of regulation. Tribal lands have their own government and are granted special status under federal law. For this reason, a carrier that seeks to provide service there would properly seek ETC status from the Commission, not the state. The Commission has invoked Section 214(e)(6) to grant ETC status to several tribal entities.[9] It has not yet acted on two other petitions

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9 *E.g., Petition of Saddleback Communications for Designation as an Eligible Telecommunications Carrier Pursuant to Section 214(e)(6) of the Communications Act,* 13 FCC Rcd 22433 (CCB 1998).

from wireless carriers which are not tribal entities to provide service on tribal lands.[10] BAM does not believe Section 214(e)(6) permits a different result in the latter situation. In both cases, the carrier showed that the provision of CMRS on the tribal lands is not subject to the state agency's authority because of the sovereign status of the tribal lands. Moreover, neither the language of Section 214(e)(6) nor its legislative history provides any indication that it was to apply only to tribal-owned entities; instead, as the *Further NPRM* correctly recognizes, it applies whenever the state has no jurisdiction, for whatever reason. Just as the state does not regulate the provision of many other businesses on sovereign tribal lands, it does not regulate telecommunications services.

BAM urges the Commission to grant both of the pending ETC petitions from CMRS providers to serve tribal lands promptly. This will remove any uncertainty over the proper application of Section 214(e)(6) to carriers serving tribal lands, and encourage them to seek to provide universal service to those areas. Conversely, uncertainty about the ETC process will only frustrate achievement of the Commission's goal to expand universal service to tribal lands.

B. Application of Section 214(e)(6) to CMRS. The second situation where Section 214(e)(6) applies is where the carrier itself is not regulated by the

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10 Public Notice, "Western Wireless Corporation Petitions for Designation as an Eligible Telecommunications Carrier and for Related Waivers to Provide Services Eligible for Universal Service Support to Crow Reservation, Montana," CC Docket No. 96-45, DA 99-1847 (rel. Sept. 10, 1999).

state commission. This provision gives the Commission sufficient legal basis to determine that it will receive and act on ETC petitions from CMRS providers in these cases. A CMRS provider would file for ETC status with the Commission, not with a state. Again, however, uncertainty as to Section 214(e)(6)'s application to wireless providers is discouraging BAM and other providers from seeking to participate in universal service programs, and thereby delaying access of unserved residents to affordable telephone service. There are multiple reasons why the Commission should take the lead in addressing CMRS provider ETC petitions.

First, wireless providers are governed by a fundamentally different regulatory paradigm of *federal* primacy over all of their operations, interstate and intrastate. That paradigm superseded the division of jurisdiction between states and the Commission depending on whether a service was "intrastate" or "interstate" that had previously governed all services (and still applies to non-CMRS carriers). While that distinction was established by Section 152 of the Communications Act, in 1993, Congress expressly made Section 152 subject to new Section 332, which effectively "federalized" most aspects of CMRS regulation. Congress' action was consistent with its goal to achieve a seamless national wireless infrastructure. States were divested of jurisdiction to regulate entry by CMRS providers into markets and were also preempted from regulating rates.[11] It would in turn be

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11 Although Section 332(c) provided a procedure for states to seek to preserve existing rate regulation, and some states petitioned to do so, the Commission (continued...)

consistent with Congress's federal oversight structure for CMRS for the Commission to assume primary ETC designation duties for CMRS providers.

Second, Commission oversight of the ETC process makes sense because many wireless carriers are licensed to serve areas that encompass multiple states. They construct their systems and offer their services without regard to state boundaries. BAM's Washington, D.C. cellular system, for example, serves customers in three jurisdictions through a single, integrated network. The Commission has encouraged the deployment of interstate regional and national "footprints" as promoting service to the public. The interstate nature of wireless should have a commensurately federal process to determine ETC status.

Third, although Section 332(c)(3) preserved states' authority to regulate "terms and conditions" of wireless service, this ancillary responsibility does not grant the state authority to act on ETC petitions. In fact, the Wyoming Public Service Commission recently held that "terms and conditions" authority is not equivalent to jurisdiction over ETC designations in determining that it had no Section 214(e)(2) authority to act on a wireless carrier's ETC petition.[12]

(...continued)

denied all petitions. Accordingly, no state today may regulate any rates of a CMRS providers. *See, e.g., Petition of the Connecticut Department of Public Utility Control to Retain Regulatory Control of the Rates of Wholesale Cellular Service Providers,* 10 FCC Rcd 7025 (1995), *aff'd,* 78 F.2d 842 (2d Cir. 1996).

12 *In the Matter of Amended Application of WWC Holding Co., Inc. for Authority to be Designated as an Eligible Telecommunications Carrier,* Docket No. 70042-TA-98-1, issued August 13, 1999. To the extent that a state believes

(continued...)

Fourth, the unlawful obstacles which at least some states have erected against wireless carriers seeking to become ETCs underscores the need for the Commission to assert responsibility over CMRS ETC petitions. As discussed above, states have demanded that wireless providers meet requirements they cannot possibly achieve, meet entry requirements that are clearly preempted, and comply with discriminatory requirements that are not imposed on incumbent LECs. Other states have delayed wireless ETC petitions, delaying service to residents who lack it. BAM believes that, unless the Commission asserts lead responsibility over the wireless ETC designation process, these obstacles will remain, thwarting the Commission's goal to develop a competitive universal service program that will reach more Americans.

Fifth, many states have by statute deregulated wireless and have declared that their state public utility commission has no authority to regulate these services as distinct from landline services.[13] Other state commissions have themselves not

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(...continued)

that its "terms and conditions" regulation of a CMRS provider gives it "jurisdiction" over that provider's Section 214(e)(6) ETC petition to the FCC, it may of course make that argument and the Commission would then decide.

13 Delaware and Maryland, for example, have each amended their public utility statutes to exempt CMRS providers from regulation by the state commission. Based on these provisions, BAM filed a petition with the Commission for ETC status in these states, and showed that it is able to provide the basket of universal service offerings. *See* Public Notice, "Petition of Cellco Partnership d/b/a Bell Atlantic Mobile for Designation as an Eligible Telecommunications Carrier," CC Docket No. 96-45, DA 99-2544 (rel. November 16, 1999).

adopted wireless-specific rules or have forborne from enforcing landline rules on wireless providers. In these situations, the wireless carrier is clearly "not subject to state jurisdiction" under Section 214(e)(6), making this Commission the proper agency to act on ETC petitions.

FCC leadership in granting wireless ETC designation petitions would not preclude a state role in some cases. In discussing the use of this provision to consider petitions to serve tribal lands, the *Further NPRM* proposes that the tribal authority and state submit comments on their views as to jurisdiction so that the Commission could determine whether it or the state would make the ETC decision. The same process can be used for wireless ETC petitions. Because the Commission would continue to place such petitions on public notice and solicit state input, the state would have the opportunity to participate and, if it so desired, argue that it rather than the Commission had ETC designation authority or, more to the point, comment on whether the carrier had met the preconditions for ETC status (which should be the only concern a state should have in any event).

This procedure would fulfill the primary federal oversight role that applies to CMRS, ensure that states can play an active role, and avoid the patchwork of state-by-state ETC decisions and burdens that some states have imposed. The result will be quicker, consistent actions on ETC petitions that will in turn promote expansion of competitive universal service offerings.

Given Congress's preemption of states from all rate and entry jurisdiction over CMRS, it can be argued that Section 214(e)(6) applies to *all* CMRS ETC petitions, and that *no* states have jurisdiction to make the decision. In light of the nascent level of CMRS participation in universal service, the Commission need not resolve that issue at this time, but can simply decide to allow states that currently impose some CMRS regulation to make the determination of ETC status. If, however, the process continues to impair wireless providers from participating in universal service programs, the Commission should then invoke its primacy over CMRS and its authority under Section 214(e)(6) to decide all CMRS ETC petitions itself.

III. WHERE STATES RETAIN AUTHORITY OVER WIRELESS ETC DESIGNATIONS, THEY SHOULD BE PROHIBITED FROM IMPOSING ADDITIONAL REQUIREMENTS.

It is equally important that the Commission prohibit state efforts to complicate the ETC process in those situations where states are found to have jurisdiction over CMRS providers seeking ETC status. The requirements some states are imposing are either illegal under Section 332 because they constitute rate or entry regulation or illegal under Section 254 because they violate a state's obligation to designate ETCs. Even if not clearly unlawful, these state actions undermine the Commission's goals for universal service, compelling Commission intervention. If the Commission determines that states may have at least in some

cases the authority to consider and act on ETC petitions that are filed by wireless providers, it must take at least the following actions.

1. Limit state commission ETC authority to where the state commission already has in place regulations over wireless pursuant to statutory authority. A state commission that has no statutory authority to regulate wireless carriers cannot circumvent that lack of authority by asserting that it is somehow authorized to make ETC designations. Were that the case, Section 214(e)(6) would be nullified, because any state could ignore its lack of jurisdiction over carrier by claiming that it is not regulating the carrier but only asserting ETC designation authority.

2. Set a deadline to prevent states from delaying ETC decisions. Few if any wireless carriers will expend enormous resources to pursue a lengthy and costly state proceeding in order to receive the limited funds that are available to support universal service. State delays have discouraged efforts of competitive carriers to participate in universal service, and will continue to do so unless those delays are prohibited. BAM thus asks that the Commission adopt a rule requiring that state commissions receiving ETC petitions must act on such petitions in 90 days.[14] The carrier will have by definition submitted a petition that sets forth the facts as to how it meets the federal standards for ETC status and can offer the basket of

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14 The Act itself already places certain time limits on state action, for example, in acting on interconnection disputes. See 47 U.S.C. § 251(b). Nothing in the Act prohibits the Commission from adopting such a procedural deadline.

universal services. There is no reason why a decision cannot be rendered within three months thereafter. Given the record of long delays by some state commissions, a deadline for them to act is clearly warranted.

3. Declare that a state commission may not condition grant of ETC status on a wireless carrier's commitment to serve a portion of the state that it is not licensed to serve under its federal license. Unlike landline carriers, which secure rights to operate in portions of a state from the state commission, CMRS providers are licensed to serve FCC-defined geographic areas. They are prohibited from having subscribers outside those areas. A state which conditions grant of ETC status on requiring service statewide when the carrier holds a federal license that is not coterminous with the state's borders would thus impair if not preclude the wireless carrier from qualifying for ETC status – and would undermine the federal licensing scheme for CMRS. This should be prohibited. The Commission should declare that CMRS providers cannot be compelled to serve more than their licensed area as a condition of winning ETC designation.

4. Preclude a state commission from adding additional requirements or prohibitions that have the effect of regulating rates or entry or of precluding the carrier from qualifying as an ETC. The task of the state commission should be to determine if the wireless petitioner is able to provide the federal basket of universal services. Other requirements only impede achievement of federal objectives. For example, requirements that the carrier meet "CLEC"-type requirements are clearly

prohibited by Section 332. A wireless provider may not be obligated to obtain a certificate of necessity, submit rates, make its costs available, or submit to any conditions that would subject the pricing of its services to state commission review.

The Fifth Circuit's decision reviewing the universal service rules[15] is not to the contrary. The court held that the Commission erred in prohibiting the states from imposing additional eligibility requirements on carriers that were otherwise eligible to receive federal universal service support. First, that decision was made in the context of *landline* service, for it quotes Section 152, but that provision has no bearing on regulation of CMRS providers. In 1993, Congress amended that provision to make it expressly subject to Section 332, which adopts a fundamentally different jurisdictional divide for CMRS that is not based on whether interstate or intrastate service is involved. Second, the court did not address CMRS at all in the context of ETC petitions, and thus did not consider how Section 332 would affect the Commission's authority to set ETC designation rules for *wireless*. Third, the court did hold that if a state "imposed onerous eligibility requirements that no otherwise eligible carrier could receive designation, that state commission would probably run afoul of § 214(e)(2)'s mandate to "designate" a carrier or "designate more than one carrier." 183 F.3d at 418. The FCC is thus empowered to prohibit states from imposing such additional burdens.

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15 *Texas Office of Public Utility Counsel, et al. v. FCC,* 183 F.3d 393 (5th Cir. 1999).

IV. THE COMMISSION SHOULD REVISE ITS UNIVERSAL SERVICE RULES TO REMOVE LANDLINE BIAS.

Barriers to wireless providers which want to participate in the universal service program exist outside of the ETC process as well. Federal and state high-cost support and lifeline program regulations, for example, make it difficult for wireless carriers to qualify for support or, at a minimum, raise practical problems for those carriers in seeking to participate. Wireless carriers face a "square peg/round hole" problem because the rules are written from a landline perspective and do not easily accommodate terrestrial or satellite-delivered wireless services.

BAM urges that the Commission declare that any state high-cost or lifeline program must ensure that its requirements do not impose burdens on particular carriers because of the technology that they have chosen. In addition, the Commission should "scrub" its own rules to remove any landline "bias." Even though the landline focus of the Commission's rules may have been unintentional, it nonetheless complicates wireless carriers' ability to participate in universal service programs because it appears to impose constraints on wireless carriers. BAM recommends the following rule clarifications or changes:

47 C.F.R. § 54.7 – Intended use of support. This rule states, "A carrier that receives federal universal service support shall use the support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended." Although this language is drawn from Section 254(e) of the

Act, the Commission should clarify that it does not mean that wireless carriers, which are not rate regulated either at a federal or state level and do not use uniform systems of accounts or other regulatory accounting, must segregate universal service dollars from other revenues. Moreover, concerns about cost-shifting that might be pertinent to rate-regulated landline carriers and that underlie this requirement are not relevant to wireless, which operate in a competitive, rate-deregulated market. Wireless carriers should be deemed to comply with this rule by including support they receive in general revenues.

47 C.F.R. § 54.101(a)(2) – Core services. Among the nine core services that ETCs are required to provide is "local usage," which "means an amount of minutes of use of exchange service, prescribed by the Commission, provided free of charge to end users." The Commission should make two clarifications to this rule that will help wireless providers compete for universal service support. First, it should reject any prescribed amount of local usage. The record developed in other proceedings in this docket supplied ample grounds for not micromanaging the process by setting quantitative requirements. Second, it should clarify that "free" means no additional charge beyond the prepaid or contracted-for monthly charge for included minutes. The Commission has favorably commented on the growth of wireless rate plans that provide customers with a large "basket" of minutes in return for a fixed monthly fee. By clarifying that these rate plans qualify, the Commission will promote their availability.

47 C.F.R. § 54.307 – High cost support. This section assumes that universal service support is a zero sum game, with any dollars going to a competitive ETC necessarily being lost by the ILEC, because it states that when the new ETC receives support, "The amount of universal service support provided to such incumbent local exchange carrier shall be reduced." If a competitive ETC qualifies for revenues, it may do so by attracting new customers not served by the incumbent ETC; there is no need to attempt to correlate specific customers. Forcing this zero-sum game is particularly harmful in encouraging expansion of universal service to tribal lands and insular areas, which the Commission has recognized often lack any service at all. Modifying this rule will promote the expansion of support to the nation's residents who are currently without service.

Another change should be made to this provision: Subsection (b) discusses the carrier's "working loops," a landline concept. This term should be changed to "subscribers" or "wireless or landline activations" to ensure that wireless can be included.

47 C.F.R. § 54.400 – Lifeline: toll control. Subsection (d) defines "toll limitation" as "either toll blocking or toll control." BAM and other wireless carriers are increasingly offering "prepaid" services in response to substantial demand from consumers who do not want a monthly service contract but merely want to purchase a set amount of airtime in advance. The Commission has approvingly reported on the potential of prepaid services to meet unserved demand, serve the public, and

promote competition.[16] To avoid uncertainty as to how prepaid services meet this requirement, these services should be deemed to comply with the toll control definition, because prepaid service is inherently a mechanism for limiting toll calling. The same clarification should be made with regard to Section 54.101(a)(9), which identifies "toll limitation" as a core service.

47 C.F.R. § 54.401(c) – Lifeline: no deposit rule. This provision states that ETCs "may not collect a service deposit in order to initiate Lifeline service, if the qualifying low-income consumer voluntarily elects toll blocking from the carrier, where available. If toll blocking is unavailable, the carrier may charge a service deposit." Wireless carriers can comply with this rule as long as it is interpreted to apply to prepaid service for which no deposit is necessary, and that prepaid service itself is deemed to qualify as a toll-control service due to its cost control qualities. The Commission should thus make that clarification.

47 C.F.R. § 54.403(a) – State approval of $1.75 Lifeline reduction. This section authorizes additional federal support of $1.75 to the carrier providing Lifeline service "if the state commission approves an additional reduction of $1.75 in the amount paid by consumers." This rule assumes a price-regulated carrier that will be authorized to recover specific amounts, but wireless carriers cannot under Section 332(c)(3) of the Act be subject to any such price regulation. The additional

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16 *Third Annual CMRS Competition Report,* FCC 98-91 (rel. June 11, 1998), at 25 ("prepaid service has benefits for both customers and operators.").

amount should be made available to any wireless carrier "if the carrier reduces the amount by $1.75." No state approval can or should be required.

47 C.F.R. §§ 54.403(a), 54.411(a)(1), 54.411(c) – "Residential" service and "single connection at residence." Each of these provisions employ these landline-centric terms in ways that appear to restrict wireless providers from receiving support for serving low-income residents on tribal lands and in other parts of the nation. A "line" or "connection" to a "residence" is a landline concept based on traditional state-regulated telephone services, which often draw distinctions between "residential" and "business" rates or classes of offerings. Wireless service is not delineated or regulated as "residential" or as providing a "single connection at a residence." Customers can use the handset in their homes, take it outside, or take it anywhere. Universal service support should not depend on whether service is provided through a phone jack on the wall. To achieve the goals of Section 254 and the 1996 Act generally, the Commission must make clear that the particular technology used to deliver service to low-income residents is not relevant. Each of these rules should substitute the term "consumer" for "residential" and "service" for "connection." This will make it clear that wireless-offered universal services will be available to low-income consumers who need and qualify for them.

47 C.F.R. § 54.403(b) – Lifeline program: "Lowest" rate. According to this section, carriers providing lifeline service must apply the subsidy to reduce "their lowest tariffed (or otherwise generally available) residential rate for the service

enumerated." For the reasons noted above, the Commission should either delete the term "residential" or clarify that this term does not apply to wireless service.

In addition, a wireless carrier should not be directed to dictate what is the "lowest" rate for its customers. As the Commission has recognized in its series of reports on CMRS competition, "rate" in the wirelss industry is a function of many factors, including the customer's usage patterns and needs, and how these interact with components of an offering, such as access charges, per minute charges, term of service, prepaid vs. postpaid, type of calls (local or long-distance), roaming vs. home calling, time of day and other variables. Moreover, each variable, including customer need, frequently changes in response to market competition. A carrier does not have a single, constantly available plan that is its "lowest" rate, and there is no policy reason for the Commission to attempt to decide what it is.

Therefore, the Commission should clarify that Section 54.403(b) does not preclude qualifying low-income customers from selecting the most economical wireless service plan for *their* circumstances. The goal, after all, is to enable low-income individuals to obtain service. If an individual decides that a $25 prepaid plan is the most beneficial, versus a $50 prepaid plan with a lower per-minute rate and a higher number of minutes but a higher out-of-pocket charge, the wireless carrier should be able to receive support for serving that customer. Nor is there any additional cost to the lifeline program from allowing the customer to choose the plan, because the amount of maximum support is fixed regardless of the plan.

CONCLUSION

BAM urges the Commission to seize the initiative and take immediate steps to promote expanded access to communications service to tribal and insular areas, as well as to the rest of the nation. Wireless can make real contributions toward achieving the goals of Congress and the Commission. Establishing a fast process to act on wireless carrier ETC petitions at a federal level, and clarifying existing rules to ensure that they do not preclude wireless from participating in universal service programs, will help to achieve the important objectives of this proceeding.

Respectfully submitted,

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